In the High Court of Judicature at Madras

Dated: 16/10/2003

Coram

The Honourable Mr.Justice A.K.RAJAN

Writ Petition No.3093 of 1998

S.Karunanidhi ..... Petitioner

-Vs-

1. State of Tamilnadu
rep. by Secretary to Government
Environment & Forest Department
Forest Department,
Fort St.George
Chennai.9.

2. Arasu Rubber Corporation Ltd.
rep.by its Managing Director
Nagercoil.1. ..... Respondents

Petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.K.Chandru Sr.Counsel
for Mr.M.Ravi

For respondents : Mrs.Selvi George

:O R D E R

The petitioner filed the above writ petition praying to issue a writ of Certiorarified Mandamus to call for the records of the first respondent in Lr.No.30305/FR.VII/97-1, Environment and Forest Department, dated 21.11.1997, and letter No.472/FR,8/2003-6, Environment and Forest Department, dated 14.05.2003, quash the same and issue consequential directions to the respondents to grant the scale of pay of Rs.2200-75-2800-100-4000 to the petitioner herein from the date of his initial appointment as Computer Programmer ie., o05.09.1991, in the Arasu Rubber Corporation Limited, Nagercoil, with consequential benefits.(prayer amended as per Order of Court dated 10.09.2003 in WPMP No.2 0562 of 2003).

2. In the affidavit filed in support of the writ petition, it is stated that the petitioner was appointed as Computer Programmer in the Arasu Rubber Corporation Limited /second respondent-Corporation on 0 4.09.1991 by proceedings No.3022/90-E2. After his appointment, the computer was

installed and he made representation to revise his scale of pay at Rs.2000-60-2600-75-3200, on par with the Computer Programmers working in TAFCORC, Trichy, and Tamilnadu Forest Plantation Corporation Limited, Trichy, the sister concerns of Arasu Rubber Corporation. As per G.O.Ms.No.535, Environment and Forest Department, dated 27.08.1991, the scale of pay of the Computer Programmer in the Forest Department, has been fixed at Rs.2200-75-2800-100-4000. The Managing Director replied that his request would be considered. Apart from the post of Computer Programmer, two other posts were sanctioned for the computerisation of Arasu Rubber Corporation, viz., System Analyst, scale of pay being Rs.2200-75-2800-100-4000; System Assistant, scale of pay being Rs.2000-60-2600-75-3200. But later on entire work was handled by the petitioner and the above said posts were surrendered stating that the Computer Programmer was capable of managing the entire computerisation effectively and the Corporation was able to save around a minimum of Rs.2/lakhs per annum, due to the petitioner's efforts. The petitioner was given the scale of pay of TAFCORN which requires qualification of M.Sc. in Computer Science or a Degree/Diploma equivalent thereto from a recognised University; The petitioner has possessed the qualification of B.Sc. degree in Computer Science; Certificate Course in Advanced Computer Programming; Post Graduate Diploma in Computer Applications; and more than four years' previous experience before joining Arasu Rubber Corporation. The qualification possessed by him is much higher than the notification prescribed by the other corporations. In spite of higher qualifications, he was not paid the revised scale of pay that is paid in other departments. Therefore, he made representations and the Managing Director replied that his representations would be considered. But inspite of it, his representations were not recommended to the Government and he also made representations to the first respondent also. The first respondent instead of considering the proposal in proper perspective with respect to the facts, has chosen to intimate by latter dated 21.11.1991 that the proposal to revise the pay scale is not feasible and, therefore, the petitioner has filed the present writ petition. The petitioner's scale of pay was fixed at Rs.1400-2600 to Rs.1600-50-2300-60-2600. Even that scale of pay was not given effect from the date of his initial appointment. But it was given effect to from 03.05.1991. Therefore, there is no financial benefits for the petitioner. Therefore, the present writ petition has been filed praying that he shall be paid salary on par with TAFCORN.

3. The counter-affidavit has been filed by the respondent Management (second respondent) refuting his averments and also stated that Arasu Rubber Corporation company in which the petitioner is working is undergoing a loss and financially it is not feasible to give the scale of pay as demanded by the petitioner. The proposal for revised pay for the computer programmer was placed before the Committee but the Board has not approved the proposal. However, the Government has revised the scale of pay at Rs.1400-2600 to Rs.2000-3200 with effect from 03.05.1995, after considering the petitioner's qualification on merits. Therefore, the claim of the petitioner is not acceptable.

4. Mr.K.Chandru, learned Senior Counsel appearing on behalf of the petitioner submitted that the designation namely, Computer Programmer in the TAFCORN is identical with the second respondent Corporation-Arasu

Rubber Corporation and the educational qualifications are also identical. In the circumstances, for both the Tamil Nadu Forest Department and TAFCORN, the Government pay scale cannot be different for the same post and relies upon the Judgments of the Supreme Court and claim for entitlement for pay parity on par with scale paid to TAFCORN.

5. Per contra, Mrs.Selvi George, learned counsel appearing for the respondents submitted that by letter dated 14.05.2003 written by Secretary to Government, Environment and Forest Department has stated that the Computer Programmer in Arasu Rubber Corporation cannot be on par with TAFCORN which requires the Master Degree in Computer Application or its equivalent degree in Diploma obtained from recognised University with three years experience. Mere similarity in nomenclature cannot be a ground. Therefore, taking into account all these points and the revenue, the Government passed an order earlier that the pay scale need not be revised. It is found that there is no merit in the proposal to revise the scale of pay for the post of Computer Programmer.

6. Learned counsel for the respondent also relied on another decision of the Supreme Court in Orissa University of Culture and Technology & Another v. Manoj K.Mohanty ((2003) 5 SCC 188 wherein it is stated as follows:

"In the absence of necessary averments and materials placed on records, there was no scope to give direction as is done by the High Court in the impugned order. The burden was on the respondent to establish that he has a right to equal pay on the principles of "equal pay for equal work" relying on article 14 of the Constitution. That having not been done, the respondent was not entitled to the direction to get regular pay scale with effect from September, 1997."

7. Learned counsel appearing for the petitioner submitted that the letter by the Government is factually incorrect as it refers to the qualification preferred by TAPCORN is higher than the Arasu Rubber Corproation Ltd. But as stated in the affidavit filed along with the writ petition, the basic qualification required for Computer Programmer in TAPCORN is Master Degree or B.Sc.degree in Computer Science or Post graduate and diploma in Computer Application. When that be the case, the letter of the Government dated 14.05.2003 which shows that the Computer Programmer in TAFCORN requires Master Degree in Computer application and its equivalent degree or Diploma obtained from recognised University with three years experience, is not correct. The averment stated in the affidavit that the qualification that is required for Computer Programmer in TAFCORN is only M.Sc. Computer Science or a degree/Diploma equivalent thereto from a recognised university; Post Graduate Diploma in Computer Application has not been denied. The letter dated 14.05.2003 is not an affidavit; but its contents are contrary to the affidavit of the petitioner herein. When the contents of the affidavit has not been denied by a counter affidavit, the recitals found in the letter contrary to the affidavit cannot be accepted as true. Inasmuch as the affidavit specifically states that the basic qualification that is required was only Master Degree in Computer Science or B.Sc., Computer Science, but the letter refers qualification as M.Sc., Computer Science and P.G. Diploma. Therefore it has to be presumed that it is factually incorrect. In the circumstances, it has to be seen that in spite of the order passed by this Court earlier on 14.05.2003, in the very same writ petition to consider the

case of the writ petitioner's representation and pass orders, the authorities have passed orders stating the facts which require reconsideration does not appear to be correct.

8. Following the decisions of the Supreme Court in State Bank ofIndia v. Mr.Ganesh in (2002(3)AIR SCW 2987),and in the case of State of Haryana v. Haryana Civil Secretariat Personal Staff Association (200 2 AIR 2896), the Courts cannot pass orders to fix the pay scale of pay on the ground that nomenclature of the two posts are one and the same. Fixation of pay and determination of parity in duties and responsibilities is a complex matter and it is for the executive to discharge.

9. The learned counsel for the petitioner referred to a Judgment of the Supreme Court in Employees of Tannery & Footwear Corporation of India & Another v. Union of India and others (1991 SC(1) LLJ, 563) wherein the Supreme Court has held as follows:

"It has been urged on behalf of the respondents that respondentCorporation and the Cotton Corporation of India are distinct legal entities carrying on different trading activities and the petitioners cannot claim parity in pay scales with the employees in the Cotton Corporatin of India and that the principle of "equal pay for equal work" cannot be invoked. It is no doubt true that the respondent-Corporation and the Cotton Corporation of India, are distinct legal entities. But at the same time, it cannot be ignored that both are instrumentalities of the Government of India who is bound by the directives contained in Part IV of the Constitution."

Therefore, the counsel contended that the writ petition has to be allowed as prayed for, since as per this decision, the petitioner is entitled to get the pay given to a Computer Programmer in TAFCORN.

10. This argument has some force. The petitioner has established that the basic qualification required is the same qualification prescribed in TAFCORN. But the letter dated 14.05.2003, rejecting the claim is based on the wrong assumption that the requisite qualification for Computer Programmer was different . Therefore, this letter as cited already has to be rejected.

11. Inasmuch as the educational qualification for the post of Computer Programmer in TAFCORN is also the same, as that of the post in Arasu Rubber Corporation Limited, the respondents are directed to consider the prayer of the petitioner and pass orders, within a period of two months from the date of receipt of a copy of this order.

In the result, the writ petition is disposed of with the above observation. No costs.

Index :Yes
Internet:Yes
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To
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Environment & Forest Department
Forest Department,

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Chennai.9.
2. Arasu Rubber Corporation Ltd.
rep.by its Managing Director
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